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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,002	01/16/2004	Edward J. Schmitt	00552-P0052A	7909
24126	7590	09/28/2005	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			JOHNSON, STEPHEN	
986 BEDFORD STREET			ART UNIT	
STAMFORD, CT 06905-5619			PAPER NUMBER	
			3641	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,002

Applicant(s)

SCHMITT, EDWARD J.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-8 and 10-12 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/28/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election without traverse of a funnel as illustrated in figs. 1-3 in the replies filed on 1/6/2005 and 7/18/2005 is acknowledged.

Claims 10-12 are withdrawn from consideration as being directed to non-elected inventions. Claims 1-8 read on the elected invention and an action on these claims follows.

2. The replacement sheet filed on 4/28/2005 has been approved.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3, use of the phrase "a generally pan-like shape" makes the claim indefinite. What shape is intended to coincide with a pan shape is indefinite in view of the almost limitless different shapes that could be associated with a pan. Further, it is uncertain as to how similar to a pan the shape must be in view of the term "pan-like".

Further, it is not understood as to what portion of either the base portion 16 or the side portion 18 or any combination thereof is so constituted as to form a configuration that would sit on a horizontal surface (see claim 1, lines 2-4).

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

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art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 claims “a container including a bottom portion and a side portion, the bottom and side portions of the container having a generally pan-like shape configured to sit on a horizontal surface”. However, the written description as originally filed (see para. [00015]) describes “the bottom surface of the base portion 16 is configured to make the funnel 10 to sit on a horizontal surface”. This is clearly not the same thing.

6. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 claims “a container including a bottom portion and a side portion, the bottom and side portions of the container having a generally pan-like shape configured to sit on a horizontal surface”. However, the written description as originally filed (see para. [00015]) describes “the bottom surface of the base portion 16 is configured to make the funnel 10 to sit on a horizontal surface”. This is clearly not the same thing.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Manem et al..

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Manem et al. disclose a funnel comprising :

- a) a container including bottom and side portions; 20, 21, 22, 24
- b) a funnel member including funnel and spout portion; 11, portion of 11 adjacent 12
- c) a frusto-conical shape; see figs. 2a, 2b
- d) a handle portion; and 26
- e) a plastic material funnel. col. 2, lines 1-3

9. Claims 1-2, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Heberer.

Heberer discloses a funnel comprising :

- a) a container including bottom and side portions; 16
- b) a funnel member including funnel and spout portion; 20, 44
- c) a frusto-conical shape; see fig. 2
- d) a handle portion; and 22
- e) a plastic material funnel. col. 4, lines 22-23

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Manem et al. in view of Discho or Reynolds.

Manem et al. apply as previously recited. However, undisclosed is a funnel container made of metal. Discho (page 1, lines 43-47) and Reynolds (page 1, lines 39-52) each teach a funnel container made of sheet metal. Applicant is substituting one material type of funnel

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container for another in an analogous art setting as explicitly encouraged by the primary reference (see Manem et al. (col. 2, lines 1-3)). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Discho or Reynolds to the Manem et al. container funnel and have a container funnel made of a different material type.

12. Claims 1-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Knapton.

Knapton discloses a funnel comprising :

- a) a container including bottom and side portions; 10, 14, 16
- b) a funnel member including funnel and spout portion; 32, 19
- c) a frusto-conical shape; 32, 19
- d) a handle portion; and 31
- e) a plastic material funnel. col. 2, line 66 – col. 3, line 6

13. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by West.

West discloses a funnel comprising :

- a) a container including bottom and side portions; 10, 12, 20
- b) a funnel member including funnel and spout portion; and 18, 22, 14
- c) a frusto-conical shape. 18, 22, 14

14. Claims 1-2 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hellebusch.

Hellebusch discloses a funnel comprising :

- a) a container including bottom and side portions; 6, 7
- b) a funnel member including funnel and spout portion; 17, 18

- c) a frusto-conical shape; and 17, 18
 - d) handle portions. 20
15. Claims 1-2 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Raboin et al..

Raboin et al. disclose a funnel comprising :

- a) a container including bottom and side portions; 20, 22, 24, 26, 16
 - b) a funnel member including funnel and spout portion; 88
 - c) a frusto-conical shape; 88
 - d) a handle portion; and 120, 122
 - e) a plastic material funnel. col. 3, lines 4-6
16. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.
17. This application contains claims 10-12 drawn to an invention nonelected without traverse in the paper filed on 7/18/2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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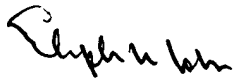
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877.

The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
September 24, 2005